

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	Chapter 7
AKORN HOLDING COMPANY LLC, <i>et al.</i> ,	)	Case No. 23-10253 (KBO)
Debtors. <sup>1</sup>	)	(Jointly Administered)
	)	Related Doc. Nos. 106, 137, 145, and 146

**OBJECTION OF CREDITOR M. JACOB & SONS, D/B/A MJS PACKAGING, TO  
DEBTORS' PROPOSED CURE AMOUNT**

Creditor M. Jacob & Sons, d/b/a MJS Packaging (“MJS”), by its undersigned attorneys, hereby submits this Objection (the “Objection”) to the *Notice of Executory Contracts and Unexpired Leases that May Be Assumed and Assigned, Pursuant to Section 365 of the Bankruptcy Code, in Connection with the Sale of Substantially All of the Debtors’ Assets, and the Proposed Cure Amount* (the “Cure Notice”) [D.I. No. 146]. In support of this Objection, MJS states the following:

1. MJS is in the business of supplying packaging materials.
2. In December 2022, Akorn Operating Company, LLC (“Akorn”) entered into a Non-Exclusive Packaging Component Supply Agreement (the “Agreement”) with MJS. A copy of the Agreement is attached hereto as **Exhibit A**.
3. Pursuant to the Agreement, MJS, as “Supplier,” agreed to continue to supply specified packaging materials (the “Packaging Components”) to Akorn and its Affiliates, as listed on Exhibit A to the Agreement.

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<sup>1</sup> The Debtors in these chapter 7 cases, along with the last four digits of their federal tax identification numbers, and cases numbers are Akorn Holding Company LLC (9190), Case No. 23-10253 (KBO); Akorn Intermediate Company LLC (6123), Case No. 23-10254 (KBO); and Akorn Operating Company LLC (6184), Case No. 23-10255. The Debtors’ headquarters is located at 5605 CenterPoint Court, Gurnee, IL 60031.

4. Paragraph 2.1 of the Agreement provides, in pertinent part, that MJS shall cause the manufacturers of the Packaging Components to manufacture the Packaging Components, and MJS will supply the Packaging Components to Akorn.

5. Pursuant to Section 9.1 of the Agreement, the term of the Agreement is for three (3) years from the Effective Date, unless earlier terminated pursuant to Section 9.2 of the Agreement.

6. Akorn placed Purchase Orders for Packaging Components with MJS which MJS accepted. MJS, in turn, caused Packaging Components to be manufactured for Akorn, as requested in Akorn's Purchase Orders.

7. On February 22, 2023, (the "Petition Date") Akorn, together with related entities Akorn Holding Company, LLC and Akorn Intermediate Company, LLC, filed voluntary petitions for relief under Chapter 7 of the Bankruptcy Code. George L. Miller has been appointed as Trustee (the "Trustee") of the Debtors' Chapter 7 bankruptcy estates.

8. On April 28, 2023, the Court entered an *Order Granting Trustee's Motion for Entry of an Order (A) Approving Bidding Procedures In Connection with Sale of Substantially All of the Estates' Assets, (B) Scheduling an Auction and Hearing To Consider the Proposed Sale (C) Approving the Form and Manner of Notice Thereof, and (D) Granting Certain Related Relief* [D.I. 137] which, among other things, establishes bidding procedures which govern the manner in which all or substantially all of the assets of the Debtors are to be sold.

9. On May 1, 2023, the Trustee filed the Cure Notice.

10. Attached as Exhibit 1 to the Cure Notice is a list of the executory contracts and unexpired leases that may be assumed and assigned to a potential purchaser in connection with the

Trustee's sale of the Debtors' assets, and the proposed cure amounts to cure any and all defaults associated with each of the executory contracts and unexpired leases.

11. Exhibit 1 to the Cure Notice lists a proposed cure amount for the Agreement of **\$520,251.75**. See Page 11 of 21 of Exhibit 1 to the Cure Notice.

12. MJS objects to the proposed cure amount for MJS, because the amount owed to MJS is **\$824,099.26**.<sup>2</sup>

13. Attached hereto as Exhibit B is a printout reflecting the Packaging Components ordered by Akorn from MJS, including Purchase Order Numbers, amounts owed, and, if applicable, the shipping dates and invoice numbers for such purchases.

14. Pursuant to Section 365(b)(1)(A) of the Bankruptcy Code, the Trustee may not assume the Agreement unless the Trustee cures Akorn's default under the Agreement (or provides adequate assurance that he will promptly cure such default), i.e., Akorn's failure to pay MJS the \$824,099.26 owed for ordered Packaging Components.

WHEREFORE, MJS respectfully requests the Court deny the Trustee's request to establish the cure amount for the MJS Agreement as \$520,251.75, and to instead establish the cure amount as \$824,099.26.

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<sup>2</sup> As set forth on the printout attached hereto as **Exhibit B**, \$303,223.51 of the \$824,099.26 is for Packaging Components produced pursuant to Purchase Orders but not yet delivered to Akorn (because Akorn did not want them delivered). Such Packaging Components are still located at MJS's vendor(s) and can be delivered to Akorn or the successful purchaser. As of the Petition Date, even though the \$303,223.57 in Packaging Components had been completed, MJS had not sent invoices to Akorn for such Packaging Components because MJS had not delivered them to Akorn.

Dated: May 14, 2023  
Wilmington, Delaware

/s/ Margaret A. Vesper  
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